IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14204 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI RAM CORPORATION THROUGH PARTNER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14204 of 2004

MR KV SHELAT for Petitioner No. 1

MR MENGDEY, Ld. AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 20/04/2005

ORAL JUDGEMENT

Rule. Mr.Mengdey, learned AGP waives service of rule on behalf of the respondent State. With the consent of learned advocates appearing for the parties, the matter is finally heard today.

2. The petitioners have prayed for quashing of the order passed by the Collector dated 15th September, 2003, whereby property of Plot 146 with construction of Sector 21 is ordered to be forfeited. The petitioners have also challenged the order passed by the State Government, whereby the order of the Collector is confirmed.

3. Heard Mr.Shelat, learned Counsel for the petitioners and Mr.Mengdey, learned AGP for the respondent Authorities.

4. Upon hearing the learned Counsel appearing for the parties, it appears that there is no dispute on the point that the Collector has passed the order of forfeiture on the ground that the construction of courtyard is made without permission and the permission granted for construction of first floor and second floor was cancelled. There is also no dispute on the point that as per the order dated 8.8.2003, the permission is granted for construction of first floor and courtyard and not only that but on 8.8.2003 building use permission is also granted. Further, today during the course of the hearing Mr.Mengdey, learned AGP has placed on record the report of Mamlatdar dated 24.2.2005, whereby the petitioners themselves have removed the construction made on the second floor.

5. Under these circumstances, so far as the first floor construction and courtyard are concerned, as on today it cannot be said that the construction is illegal or the ground which was considered by the Collector while exercising the power for forfeiture would continue to remain in existence. However, Mr.Mengdey, learned AGP submitted that the permission has been granted for first floor and courtyard after the proceedings were initiated and, therefore, on the date when the proceedings were initiated it cannot be said that the construction was lawful and, therefore, the order passed by the District Collector can be sustained in eye of law and such will be the case in respect to the order passed by the State Government.

6. Considering the facts and circumstances, I find that when the construction is permitted and the building use permission is also granted by the competent authority for first floor and courtyard and when the petitioner has removed the construction of second floor, it cannot be said that the ground on the basis of which the Collector

passed the order would continue to remain in existence. Further, when the plot is with the lawful construction, and the illegal construction is already removed, such a harsh action of forfeiture of the property on the ground that on the date when the notice was issued there was no permission, should not be allowed to continue. Under these circumstances, as the permission for construction of first floor and courtyard is already granted and building use permission is also granted and second floor construction is already removed by the petitioner, the order passed by the Collector would not survive and consequently, the order passed by the State Government confirming the order of the Collector would also not survive.

7. The petition shall stand disposed of accordingly. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.

20.4.2005 (Jayant Patel, J.)
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